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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

MAT-8189US

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on **December 28, 2005**

Signature

Typed or printed name **Lawrence E. Ashery**

Application Number

09/980,880

Filed

September 3, 2002

First Named Inventor

Yoshio GODA, et al.

Art Unit

1746

Examiner

Robert W. Hodge

Applicants requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.

See 37 CFR 3.7.1 Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.

Registration number **34,515**

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

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Telephone number

December 28, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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The Final Rejection dated September 2, 2005 rejected claims 1-29 under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. Applicants amended the claims on October 20, 2005 and again on December 2, 2005. The Advisory Action dated November 2, 2005 refused to enter the October 20, 2005 amendment. Paragraph 3 of the December 14, 2005 Advisory Action also did not enter the proposed amendments after final rejection because the USPTO concluded that the amendments did not place the application in better form for appeal by materially reducing or simplifying the issues for appeal. Nevertheless, paragraph 5 of the December 14, 2005 Advisory Action states that applicants' "reply" has overcome the § 112 rejection. Although applicants cannot determine which "reply" is referred to, the § 112 rejection is therefore not addressed herein. Furthermore, since none of the proposed after-final amendments were entered, the pending claims are in the form submitted by applicants on June 30, 2005.

Claims 1-3, 5, 9, 10, and 12-29 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Patent Abstracts of Japan No. 08-273649 (Onagawa) in view of JP 08-339785 (Nishino). Claim 1 reads, in part:

said caulked portion includes a first contact portion and a second contact portion between the surface of the outer periphery end of said flange and said bend portion, a contact pressure of said first contact portion is stronger than a contact pressure of said second contact portion;

said outer periphery end of said flange portion includes a projection extending from at least one out of the surface and the back thereof;

said first contact portion is formed from a contact of said projection and said bend portion; and

said cap and said filter are electrically connected to each other by the contact with said outer periphery end and said bend portion at said caulked portion.

As recited in claim 1, a caulked portion is formed while the outer periphery end of the flange is positioned in the bend portion. The caulked portion includes a first contact portion and a second contact portion between the surface of the outer periphery end and the bend portion. The outer periphery end and bend portion are "jointed to each other." The outer periphery end includes a projection extending from it. A first contact portion is

formed from a contact of the projection and the bend portion. The first contact portion has a contact pressure that is stronger than a contact pressure of the second contact portion.

Paragraph 12 of the Final Rejection contends that Nishino would have made it obvious to include a protrusion in the outer periphery of the flange portion of the Onagawa device in order to improve leakage resistance of the Onagawa battery. Applicants respectfully disagree. The purposes of Onagawa and Nishino are different. The purpose of Onagawa is to provide a battery whose valve actuating pressure can be stably maintained over a long period of time. In Onagawa, the sealing plate 2 is metal (paragraph 006) and it comes into direct contact with positive electrode terminal 5. A gasket 3 is on the outside of, and partially surrounds, the joined sealing plate 2/electrode terminal 5. The purpose of Nishino is to prevent leaking of electrolyte by placing a protrusion 1a on the flange and an improved gasket 3 between the protrusion and the positive electrode case 2.

The Final Rejection contends that it would have been obvious to add a Nishino protrusion in the Onagawa device in order to improve leakage resistance. Applicants respectfully disagree. Nishino requires not only the protrusion, but also the gasket 3. Specifically, the Purpose paragraph of the Nishino Abstract states that it operates by "compressing a gasket in a part corresponding to the protrusion by a prescribed compressing rate." Accordingly, in order to obtain improved leakage resistance in the Onagawa device, the Nishino protrusion and the Nishino gasket 3 would have to be incorporated into the Onagawa device. Nishino fails to teach or suggest that improved leakage resistance can be obtained by using only the Nishino protrusion. Therefore, the Office Action has incorrectly concluded that it would have been obvious to include a protrusion, alone, in the outer periphery of the Onagawa flange portion in order to improve leakage resistance. For this reason alone, amended claim 1 is not subject to rejection under 35 U.S.C. § 103(a) as unpatentable over Onagawa in view of Nishino.

Even if it would have been obvious to use only the Nishino protrusion in Onagawa (which applicants do not concede), there is no further disclosure or suggestion in either reference that the first contact portion ("a contact of said projection and said bend portion") would exhibit a first contact pressure, that a second contact portion would

exhibit a second contact pressure, and that the first contact pressure would be stronger than the second contact pressure.

Furthermore, if both the Nishino protrusion and the Nishino gasket 3 were incorporated into Onagawa, the newly added gasket would intervene between the newly added protrusion and the bend portion of Onagawa's sealing plate 2. The addition of a protrusion and a gasket into Onagawa would prevent the resulting device from reading on claim 1. The resulting device would not have a first contact portion "formed from a contact of said projection and said bend portion" because the protrusion would necessarily contact the gasket, not the bend portion. As a further consequence, the first contact portion would not exhibit the requisite first contact pressure because these would not be a first contact portion "formed from a contact of said projection and said bend portion." Moreover, there would not be "a second contact portion between the surface of the outer periphery end of the flange and said bend portion," thereby precluding a contact pressure at the second contact portion.

The December 14, 2005 Advisory Action maintained the rejection because "any sealant has infinite contact portions and because of the chemical nature of all sealants it is inherent that there will be weak and strong contact portions, therefore the prior art still reads on the claims as so recited." This statement misinterprets the claims. Claim 1 recites that the "first contact portion is formed from a contact of said projection and said bend portion" and that the outer periphery end includes the projection. The caulked portion is formed "while said outer periphery end of said flange is positioned in said bend portion." Although the caulked portion includes contact portions, the claim does not recite that the caulk forms the contact portion. Instead, the "first contact portion is formed from a contact of said projection and said bend portion." Any purported contact portions of the caulk are irrelevant to an interpretation of claim 1.

For all of the above reasons, claim 1 is not subject to rejection under 35 U.S.C. § 103(a) as unpatentable over Onagawa in view of Nishino.

The other independent claims recite similar features:

Claim 12 recites, in part:

each of the peaks has a stronger contact pressure against said bend portion of said filter as compared with zones other than said peaks.

Claim 14 recites, in part:

said caulked portion includes an integral projection such that said outer periphery end and said bend portion are integrally projected;

* * * * *

said integral projection has stronger contact pressure as compared with zones other than said integral projection.

Claim 16 recites the same key features as claim 1. Method claim 23 recites features that are similar to claims 1 and 16.

For all of the above reasons, applicants submit that this application is in condition for allowance.